

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.01.2021

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

C.M.A.No.2196 of 2019

The Tamil Nadu Industrial Investment Corporation Limited,
Rep.by its Branch Manager,
Dharmapuri Branch,
DDDC Building(Upstairs),
Pennagaram Road,
Dharmapuri Town,
Dharmapuri Taluk and District. ... Petitioner

vs.

1.M/s.Sriram Gas Service
Rep.by its Proprietor,
G.Venkatasubramanian,
S/o.Govindan,
Door No.204, Salem Main Road,
Kaveripattinam,
Krishnagiri Taluk,
Krishnagiri District.

2.G.Venkatasubramanian

3.K.A.Duraisamy

4.D.Balaji

5.D.Sivaprakasam

6.D.Anitha

... Respondents

PRAYER : Civil Miscellaneous Appeal is filed under Order 43 Rule 1 of Civil Procedure Code, to set aside the Order and Decreetal Order passed in I.A.No.1 of 2018 in S.F.C.O.P.No.10 of 2011 on the file of the Additional District Court, Dharmapuri dated 10.12.2018 and allow the above Civil Miscellaneous Appeal.

For Petitioner : Mr.K.Magesh
For Respondents : Mr.C.K.M.Appaji
for RR3 to 6
No-appearance for RR1 & 2
Not ready in notice

O R D E R

The Fair and Decreetal order dated 10.12.2018 passed in I.A.No.1/2018 in S.F.C.O.P.No.10 of 2011 is under challenge in the present Civil Miscellaneous Appeal.

2. The original petition is filed by the appellant with a prayer to enforce the respondent personally for sale of scheduled property and the said S.F.C.O.P was dismissed for default. To restore the O.P, the appellant filed an interlocutory application under Order 9 Rule 9 of C.P.C. The said application was dismissed by the trial Court merely on the ground that the petition is pending for about five years. Therefore, they have to redress their grievances through alternate resolution method. Such a reason cannot be an acceptable reason for the purpose of refusal of restoration of S.F.C.O.P filed by the appellant. Resolving the disputes through an alternate resolution method is a discretion of the parties and the Court cannot dismiss the restoration petition merely on the ground that the matter is pending for about five years.

3. This being the principles to be followed, the reasons stated for rejection of restoration petition is not based on sound legal principles. Therefore, this Court is inclined to consider the appeal. Accordingly, the Fair and Decreetal Order dated 10.12.2018 in I.A.No.1 of 2018 in S.F.C.O.P.No.10 of 2011 is set aside and the Civil Miscellaneous Appeal stands allowed. No costs.

4. The trial Court is requested to dispose the original petition as expeditiously as possible preferably within a period of 10 months from the date of receipt of copy of this Order. The parties to the Original Petition are directed to co-operate for earlier disposal of the petition and the trial Court can refuse unnecessary adjournments, if at all sought for by either of the parties.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

ssb

To
The Additional District Court, Dharmapuri.

+1cc to Mr.K.Magesh, Advocate, sr no.1858

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GP (CO)
RMP (26/02/2021)



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